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Wednesday, 3 December 2008, 10 a.m.

New York

President:	Mr. Jurica	(Croatia)
Members:	Belgium	Mr. Grauls
	Burkina Faso	Mr. Kafando
	China	Mr. Zhang Yesui
	Costa Rica	Mr. Urbina
	France	Mr. Ripert
	Indonesia	Mr. Kleib
	Italy	Mr. Terzi di Sant'Agata
	Libyan Arab Jamahiriya	Mr. Ettalhi
	Panama	Mr. Arias
	Russian Federation	Mr. Churkin
	South Africa	Mr. Kumalo
	United Kingdom of Great Britain and Northern Ireland	Ms. Pierce
	United States of America	Ms. DiCarlo
	Viet Nam	Mr. Hoang Chi Trung

Agenda

Reports of the Secretary-General on the Sudan

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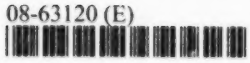

The meeting was called to order at 10.15 a.m.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court.

It is so decided.

I invite Mr. Moreno-Ocampo to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

At this meeting, the Security Council will hear a briefing by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court, whom I welcome. I now give him the floor.

Mr. Moreno-Ocampo: I thank Council members for the opportunity to brief the Council again on my judicial activities. As in the past, I will endeavour to provide as much clarity as possible on the steps foreseen by my Office.

One year ago, in December 2007, I informed the Council that my office would investigate who bears the greatest responsibility for ongoing attacks against civilians in Darfur, who maintains Minister Ahmad Harun — a man indicted for war crimes and crimes against humanity — in a position to commit crimes, and who instructs Harun and others. I also informed the Council that I was planning to investigate a third case focusing on the attacks against African Union peacekeepers.

Six months later, in June 2008, I informed the Council about the details of those two cases. I described the attacks against ethnic groups throughout Darfur, in their villages and in the camps for displaced persons, attacks which had been pursued over a period of five years. Such acts required, I said at the time, the sustained mobilization of the Sudanese State apparatus, including the military, security and intelligence services and including the integration of the militias and Janjaweed into the reserve forces, the coordination of the diplomatic and public information bureaucracies and the control of the judiciary.

I indicated that the case would be presented to the Judges by mid-July 2008. I also described the progress of the investigation into the murderous attack by rebels against peacekeepers in Haskanita in September 2007. I reported again that the Sudanese Government had taken no steps to arrest and surrender Ahmad Harun and Ali Kushayb, against whom the Judges had issued arrest warrants in April 2007.

Finally, I asked the Security Council to send a strong message to the Government of the Sudan requesting cooperation and compliance. Presidential statement S/PRST/2008/21 of 16 June 2008 sent this strong and united message:

> "The Security Council takes note of the efforts made by the Prosecutor of the International Criminal Court to bring to justice the perpetrators of war crimes and crimes against humanity in Darfur ...",

and

> "the Council urges the Government of Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court, consistent with resolution 1593 (2005), in order to put an end to impunity for the crimes committed in Darfur."

Security Council resolution 1593 (2005) gave jurisdiction to the Court. That presidential statement confirmed the Council's support for the judicial work of the Court.

As announced, on 14 July 2008, I requested Pre-Trial Chamber I to issue an arrest warrant against President Omar Al-Bashir on charges of genocide, crimes against humanity and war crimes. The evidence shows that in March 2003, President Al-Bashir ordered the attacks against the Fur, Masalit and Zaghawa ethnic groups. Stating, "I want no prisoners or wounded, only scorched earth", he triggered brutal attacks in villages and in camps for displaced persons. At least 35,000 persons have been killed; approximately 300,000 suffered a slow death; and thousands of women and girls are the victims of rape. Today, the 2.5 million people in the camps are being subjected to living

conditions calculated to bring about their physical destruction.

In response to the application, Presidential Adviser Bona Malwal said on 25 July, "We are telling the world that, with the indictment of our President Al-Bashir, we cannot be responsible for the well-being of foreign forces in Darfur"; Adam Hamid Musa, recent Governor of South Darfur, threatened that there would be "more genocide such as has never before been seen by anyone" if President Al-Bashir were indicted; and President Al-Bashir himself said, "We are not looking for problems, but if they come to us, then we will teach them a lesson that they will not forget." Such statements inciting violence are threats against the victims and against the men and women deployed on the ground under the authority of the Council. Such threats should be seen for what they are: a confirmation of criminal intentions.

The judges will rule shortly on this application. It is time to be prepared for their ruling.

On 20 November 2008, I presented to Pre-Trial Chamber I the Haskanita case, against three rebel commanders allegedly responsible for the war crimes of directing attacks against peacekeepers, murder and pillaging. Those commanders led forces of approximately 1,000 men with heavy weapons to attack peacekeepers of the African Union Mission in the Sudan (AMIS). They killed 12 peacekeepers and severely wounded 8 others. Such attacks against peacekeeping operations constitute exceptionally serious offences; they strike at the heart of the international system established for the purpose of maintaining peace and security; and they affect the millions of civilians whom peacekeepers are mandated to protect.

In response to my Office's application, there have been reactions by five rebel groups, parties to the conflict, stating that they are ready to collaborate with the International Criminal Court (ICC) and to hand over any member of their movement if so requested by the Court. Such words must be followed by actions. The individuals involved in the crimes will have to come to The Hague and appear before the judges. No one is above the law.

Over the past few months, the Government of the Sudan has not heeded the Council's presidential statement contained in document S/PRST/2008/21. Genocide continues. Rapes in and around the camps continue. Humanitarian assistance is still hindered. More than 5,000 displaced persons die each month. I repeat: each month, more than 5,000 people die.

In Kalma camp on 25 August, Government forces armed with guns attacked civilians — Furs — ho sought to defend themselves with sticks and spears. At least 31 were killed and more than 65 were wounded, including women and children. On 10 September, my Office sent a letter to the Government of the Sudan requesting information on national investigations or prosecutions planned or under way in relation to the events of 25 August. There has been no response.

In camps all over Darfur, the Humanitarian Aid Commission, within Minister Harun's remit, working in close association with the intelligence and security apparatus, is as active as ever. Significantly, the Commission's most recent act was to put an end to mental health care for the displaced. Day after day, the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and others tally the incidents of rape perpetrated against women and girls. Yet, as recently as 7 October, President Al-Bashir publicly stated that "mass rape does not exist" in Darfur, adding that "women make these claims because they are relatives of the rebels". Villages continue to be bombed, as evidenced by the recent air strikes on Dairi Shagi and Oum Al-Wadi, in North Darfur. An additional 300,000 people have been displaced since the beginning of this year.

Complementarity is a cornerstone of the Rome Statute. Complementarity is an opportunity for each State to shoulder its own primary responsibility for investigating and prosecuting crimes. As Ivo Sanader, Prime Minister of Croatia, described in one concise sentence in the General Assembly, "The ICC provides a vital recourse to justice in situations where national Governments cannot or will not address these issues themselves" (*A/63/PV.12*).

In the present case, applying the complementarity test is a straightforward matter. There has been no change since June. There are no national proceedings in the Sudan in relation to the massive crimes being investigated by the Court. The report of the Government of the Sudan circulated to the African Union and the United Nations on 17 September 2008 officially confirms that. As the report indicates, over the past five years, the Sudan has tried and completed only seven cases — I repeat, seven cases — that are

from the dockets of the ordinary courts and, more important, have no connection to the campaign of crimes coordinated by Ahmad Harun, perpetrated by Ali Kushayb and others and, as the prosecution alleges, ordered by President Al-Bashir. The gravest case investigated by the Sudanese authorities is that of a student killed during a demonstration. In spite of all the statements about the work of the Special Courts since 2005, and in spite of recent announcements and appointments, nothing — nothing — has been done.

Rumours of an investigation of Ali Kushayb have not materialized to date. And Ahmad Harun, as the Council knows, is still the Minister of State for Humanitarian Affairs of the Sudan, in charge of the same people he has displaced. President Al-Bashir has publicly declared that he would not hand over Minister Harun to the International Criminal Court, because Minister Harun was implementing his instructions. The impunity afforded to Ahmad Harun is a direct message to all perpetrators of crimes in Darfur that the President will protect those who follow his orders. It is also a threat to the victims, to the personnel which you, members of the Security Council, mandated on the ground, and a direct challenge to the authority of the Council itself.

President Kikwete of the United Republic of Tanzania, in his capacity as President of the African Union, stated in the General Assembly that the most urgent matter is to save lives in Darfur. His words were wise words. These crimes must be stopped. For years, the Security Council and Member States have warned the Sudanese authorities about the illegality of bombing schools and of the dangers posed by not disarming the militia/Janjaweed.

This is a very important issue. The mobilization of the militia/Janjaweed has allowed President Al-Bashir to disguise the conflict for years as a tribal one that had nothing to do with State forces. President Al-Bashir created the illusion of militia/Janjaweed autonomy, and this helped him to continue to carry out the genocide in the face of international scrutiny.

In order to stop the crimes, this Council has repeatedly formulated key recommendations — namely, disarming the militia/Janjaweed; ending air strikes against civilian targets; facilitating aid; and promoting accountability. In response, the Government of the Sudan has offered empty promises, which have been contradicted by their actions.

As early as 19 June 2004, President Al-Bashir ordered a complete mobilization to disarm all illegal armed groups in the Darfur region, including the Janjaweed, only to state the day after his pledge that this applied only to the bandits, not to the Popular Defence Forces, Popular Police or other tribesmen armed by the State to fight the rebels. Again, on 3 July 2004, the Government of the Sudan issued a joint communiqué with the United Nations in which the Government promised to disarm the militias, bring the perpetrators of human rights abuses to justice and remove any obstacles to humanitarian access. The list is endless.

In Italy, on 15 September 2007, President Al-Bashir promised a ceasefire. Three weeks later, Sudanese troops and their allied militias killed over 30 civilians in an attack on Muhagiriya in South Darfur. On 19 December 2007, President Al-Bashir gave a public address, stating the Government's unilateral commitment to a ceasefire in Darfur. Aerial bombardments of civilians ensued within a month, with strikes against the villages of Abu Surouj, Sirba and Suleia in January and February 2008. Recently, on 17 October 2008, the Secretary-General reported to the Security Council that the Government of the Sudan had yet to stop aerial bombardments; had yet to take steps to disarm the militia/Janjaweed; and had yet to comply with its obligations under humanitarian law to protect civilians. On 12 November, President Al-Bashir pledged once again to commit to a ceasefire and to disarm the Janjaweed. On 19 November, one week later, Secretary-General Ban Ki-moon said that the United Nations was again looking into reports of continuing aerial bombings on civilians in Darfur.

When it comes to justice, furthermore, only words have been offered. Opening the Sudanese People's Initiative one month ago, President Al-Bashir said:

> "Because we believe that justice is a paramount value and ... is the foundation of good governance, we announce our commitment to establish the rule of law in all parts of Darfur in order to do justice to the oppressed.... I have instructed all legal bodies to continue performing their duties in Darfur without laxity, paying special attention to acting on complaints and finalizing legal procedures in the best possible way in order to guarantee the conduct of fair trials in total transparency."

Nevertheless, every day we hear of human rights defenders being arrested and tortured in Khartoum. Three were arrested last week and tortured on account of giving information to the International Criminal Court. So-called suspected ICC witnesses are being arrested and tried for treason. Sudanese officials are looking for possible witnesses in order to silence them. This is not how evidence is collected; this is how crimes are covered up. This is the "justice to the oppressed" that President Al-Bashir is talking about.

All the partners of the Sudan have advised it that the only way forward is to take concrete and concise steps. The Sudanese authorities have not taken any. President Al-Bashir could have disarmed the militia, stopped attacks on civilians, returned land to the displaced, arrested and surrendered Harun and Kushayb to the ICC in The Hague. He has not done so. He continues to implement his plan to destroy entire ethnic groups. His criminal behaviour includes providing immunity and concealing crimes. President Al-Bashir is using the diplomatic apparatus and campaigning against the ICC. President Al-Bashir is trying to convince organizations and the Security Council that they have to protect him. The international community cannot be part of such a cover-up. Faced with genocide and crimes against humanity, we know that inaction and business as usual are part of the crimes. The victims are not afraid of justice.

The Council has identified four tracks for a comprehensive solution in Darfur: peace, security, humanitarian aid and justice. None can succeed in isolation.

Peacekeepers and aid workers should not be forced to work in an environment where the crimes they are trying to prevent are ordered by President Al-Bashir himself. In such an environment, their efforts will never be enough. As long as the arsonists are in charge, it does not matter how many firefighters you send. There will never be enough.

The Security Council requested judicial intervention. My Office investigated those bearing the greatest responsibility. All the arrest warrants and all the requests for arrest warrants have been made public. There are no others. Ahmed Haroun and Ali Kushayb must be surrendered to the Court. All parties to the conflict must respect the law.

The decision on the request for an arrest warrant against President Al-Bashir is now in the hands of the judges. The Council must be prepared. If the judges decide to issue an arrest warrant against President Al-Bashir, there will be a need for united and consistent action to ensure the execution of the arrest warrant. President Al-Bashir will insist on denying his crimes and will offer a few words. President Al-Bashir will insist on getting the Council's protection.

The international community cannot conceal the crimes. President Al-Bashir's criminal actions should not be ignored. Statements of ceasefires followed by bombings, denial of mass rapes or promises of justice while torturing the witnesses should not be supported. The international community cannot be part of any cover-up of genocide or crimes against humanity.

As the Minister for Foreign Affairs of Costa Rica, Bruno Stagno Ugarte, said in June (see S/PV.5905), all we need is for the States members of the Security Council to muster the political will necessary to enforce full compliance with resolution 1593 (2005) by the authorities in Khartoum. Enough appeasement: the time has passed for continuing to accommodate evil.

The President: I thank Mr. Moreno-Ocampo for his briefing. I shall now give the floor to the members of the Security Council.

Mr. Ettalhi (Libyan Arab Jamahiriya) (*spoke in Arabic*): Once again, Sir, we would like to congratulation you on your assumption of the presidency of the Security Council for this month and to assure you of our full and constructive cooperation. We would also like to express our high appreciation to Mr. Jorge Urbina and his staff for their exemplary conduct of the Council's work in November.

We thank Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his briefing, although we have some criticisms of it. We believe that peace and justice are inseparable objectives and are necessary for the settlement of any conflict, whether in Darfur or elsewhere. We believe that judicial justice can be achieved only in an environment of security and political stability. The establishment of peace and stability is thus an objective prerequisite for upholding justice. We therefore always attempt to avoid any measures that could have a negative impact on efforts to the establish security and achieve a political settlement.

Regrettably, the recent step taken by the Prosecutor regarding an arrest warrant against the

President of the Sudan, Mr. Omar Al-Bashir, raises legitimate questions and concerns. That step comes at an extremely sensitive time when the deployment of the hybrid force has begun and when further regional and international efforts are being made to move the political process ahead. This is precisely the time at which the Prosecutor has taken this step.

The report of the Prosecutor speaks of all the measures taken in accordance with the mandate accorded by resolution 1593 (2005). We hope that that mandate will be complied with objectively and professionally, in order to ensure justice, and with a comprehensive understanding of this extremely complicated subject.

Many claims and accusations have been made, foremost among which is the 14 July 2008 request that the ICC to issue an arrest warrant against the President of the Republic of the Sudan, Mr. Omar Hassan Al-Bashir, within the context of accusations of crimes of genocide. This request was made in a manner that gave the impression that we are dealing with a Government whose sole concern is to obliterate its most important components, namely, its people and its social fabric.

Experience and a concern for justice have taught us that strong words — and here I am referring to resolution 1593 (2005) — are not conducive to finding solutions or to creating an environment of cooperation and assistance with the Government of the Sudan, as called for by both the resolution and the report before us. To the contrary, strong words endanger the growing cooperation between the Government of the Sudan and the African Union-United Nations Hybrid Operation in Darfur. All of us understand that, by its very nature, cooperation is a dynamic process that can only be successful through calm dialogue and mutual trust, however differently we may interpret the complementary nature of the jurisdiction of the International Criminal Court or the Sudan's commitment to resolution 1593 (2005).

Although the report indicates that the Prosecutor has been actively involved with the United Nations, the African Union, the League of Arab States and other organizations, it does not address the apprehensions and concerns expressed by those bodies in many resolutions and statements with regard to the negative impact of the latest measure taken against the President of the Republic of the Sudan. For example, in its communiqué of 21 July 2008, the African Union Peace and Security Council expressed its conviction that,

> "in view of the delicate nature of the process under way in the Sudan, approval by the Pre-Trial Chamber of the application by the ICC Prosecutor could seriously undermine the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur and the promotion of long-lasting peace and reconciliation in the Sudan as a whole and, as a result, may lead to further suffering for the people of the Sudan and greater destabilization with far-reaching consequences for the country and the region" (*S/2008/481, annex, para. 9*).

Should not all those considerations be taken into account by everyone who is truly concerned about ensuring justice and ending the humanitarian suffering in the region?

In the same communiqué, the African Union Peace and Security Council requested the United Nations Security Council, in accordance with article 16 of the Rome Statute, to defer the process initiated by the International Criminal Court. Undoubtedly, the motive of the African Union Peace and Security Council is to establish peace and end human suffering, which are prerequisites for ensuring justice.

In addition to that example and the position of the African Union, which is the main partner of the United Nations in the Hybrid Operation in Darfur, other regional organizations such as the Organization of the Islamic Conference and the League of Arab States have expressed similar positions in statements and decisions that they have adopted. We therefore call on the international community, as represented in the Security Council, to take the initiative to respond to the concerns expressed and requests made by those organizations stemming from their interest in maintaining international peace and security.

We have recently seen great momentum in the Sudan in favour of establishing peace in Darfur. Decisions have been taken by the Sudan People's Initiative, with the participation of all political entities and stakeholders in Darfur and the Sudan. These decisions have been widely welcomed at the national, regional and international levels and have engendered hope for the chances of achieving peace in Darfur. Ensuring justice and combating impunity have been at the centre of those recommendations and decisions.

In conclusion, Libya would like to reiterate its strong commitment to the principles of peace and justice and to not permitting impunity. We should also like to express our ongoing readiness to take part in every effort aimed at establishing peace and ensuring justice in Darfur. We call upon the international community, the African Union and the Arab League to pursue their joint efforts to find a resolution to that bloody conflict, so as to create the conditions necessary to ensure justice.

Mr. Grauls (Belgium) (*spoke in French*): Allow me, first of all, to thank Prosecutor Moreno-Ocampo for his report. His statement prompts me to make six comments.

First, serious crimes continue to be committed in Darfur today. The information provided by the Prosecutor in that regard is alarming. We encourage him to continue his investigations into the situation.

Secondly, the arrest warrants issued for Mr. Haroun and Mr. Kushayb have not yet been executed. To the contrary, Sudanese officials have once again reiterated that the Government of the Sudan does not intend to cooperate with the Court and that, in particular, in violation of a resolution of the Security Council, that it has no intention to surrender those two persons to the International Criminal Court (ICC).

Thirdly, the report contains detailed information about the second matter at hand, namely, the charges against President Omer Al-Bashir, against whom the Prosecutor has requested an arrest warrant. My delegation is deeply concerned about information regarding the systematic involvement of the State apparatus in a plan to destroy ethnic groups, which is the basis for the charge of genocide being made by the Prosecutor. In particular, the allegations of systematic rape aimed at annihilating populations, and policies whose purpose is to methodically starve the same populations, must be either confirmed or disproved through a judicial process. Persons being investigated by the Court, now and in the future, as well as the Government of the Sudan, must reply seriously to those accusations, rather than verbally attacking the ICC and the Prosecutor. Given the extreme seriousness of the matter at hand, my delegation is more than ever convinced that the judicial process must continue in total independence. The populations of Darfur will not be able to enjoy lasting peace as long as impunity reigns.

Fourthly, my delegation takes note of the opening of a third investigation of war crimes allegedly committed by three rebel commanders. Intentional attacks against peacekeeping staff and materiel are unacceptable and must be prosecuted in conformity with the Rome Statute.

Fifthly, we thank the Prosecutor for explaining in his report and briefing the issues relating to admissibility and complementarity. These clarifications are welcome because a degree of confusion often exists around these central notions of the Rome Statute. As the Prosecutor says in his report:

> "The Office is not mandated to assess the Sudanese judicial system as a whole, or to monitor judicial proceedings in the Sudan ...
>
> "The complementarity test is whether or not the Government of the Sudan has genuinely investigated or prosecuted, or is genuinely investigating or prosecuting the cases selected for prosecution by the Office ...
>
> "Furthermore, it is the responsibility of the Government of the Sudan, or the individual concerned, should they assess that such national investigation or prosecution exist, to come to the ICC and challenge the admissibility of the case. This cannot be done through the media or through the reports of intermediaries. It can only be done through proper legal channels. Finally, the decision rests with the ICC Judges."

Sixthly, my delegation is pleased to note the many meetings between the Prosecutor and the representatives of States and organizations, particularly in Africa. This communication is indispensable and can help to dissipate a number of misunderstandings and confusion with regard to the issue of complementarity, the basis for the jurisdiction of the Court in Darfur, as well as misunderstandings with regard to the role of the Prosecutor. In this regard, it is useful to recall, as the Prosecutor did at the conclusion of his briefing, that

> "[t]here is no immunity on account of rank or official position before the International Criminal Court for persons against whom warrants of arrest have been issued by the Judges of this Court".

A number of conclusions should be drawn from what I have said. First, we must reaffirm the need to allow the International Criminal Court to do its work in

complete independence and oppose all political interference.

Secondly, the Government of the Sudan must cooperate with the Court and the Prosecutor, as required by resolution 1593 (2005) and as was recalled in the presidential statement of 16 June 2008. In particular, the Government must arrest and hand over the two individuals against whom arrest warrants have been issued — one of whom is still a Government minister — so that they can present their defence before the Court.

Thirdly, we must also urge all parties to the conflict to abstain from all violations of international humanitarian law and human rights.

Fourthly, the Security Council must not tolerate and must hold the Sudanese authorities responsible for any threat or reprisal against the peacekeeping forces, humanitarian workers or civilians in Darfur that might be organized following the issuance of an arrest warrant against the President. These threats should — and once again I quote the Prosecutor — "be seen for what they are — a confirmation of criminal intentions and not rewarded with promises of impunity. The Security Council would discredit itself if it were to allow itself to be manipulated by blackmail.

Finally, Belgium supports the call of the Prosecutor to consider imposing sanctions in the form of a travel ban or an assets freeze against persons or groups protecting persons against whom arrest warrants have been issued.

Mr. Ripert (France)(*spoke in French*): At the outset, I would like to thank Mr. Moreno-Ocampo for his report, submitted pursuant to resolution 1593 (2005).

In 2005, the Security Council referred the situation in Darfur to the International Criminal Court (ICC), pursuant to Chapter VII of the Charter, in response to the extremely serious violations of international humanitarian law committed in that region.

The most recent quarterly report of the Prosecutor unfortunately confirms that, six years later, these violations are continuing and that serious and repeated crimes falling under the jurisdiction of the ICC and within the purview of resolution 1593 (2005), continue to be committed in Darfur. Therefore, the submission to the Court remains fully justified.

In its preamble, the Rome Statute emphasizes that crimes as serious as those perpetuated in Darfur "threaten the peace, security and the well-being of the world" and affirms that "the most serious crimes of concern to the international community as a whole must not go unpunished".

These words provide a full explanation of the Security Council's action. We adopted resolution 1593 (2005) because the struggle against impunity is inseparable from the restoration of peace and security to Darfur. By its resort to article 13 of the Rome Statute, the Security Council, the principle organ for the maintenance of international peace and security, is fully carrying out the mission entrusted to it by the United Nations Charter.

Three investigations on the crimes committed in Darfur have been opened by the Prosecutor since the adoption of resolution 1593 (2005). The first led to the issuance by the Court of arrest warrants against Mr. Ahmed Haroun and Mr. Ali Kushayb for crimes against humanity and war crimes. The second led the Prosecutor to request the issuance of an arrest warrant of the President of the Sudan for genocide, crimes against humankind and war crimes. Finally, in the third, the Prosecutor placed before the Court charges on war crimes against three rebel commanders allegedly responsible for the Haskanita attack against African Union forces.

In the first instance, the Government of the Sudan is still not cooperating with the Court in the carrying out of the arrests of Mr. Haroun and Mr. Kushayb. At the moment, nothing leads us to believe that it intends to carry out these arrests. Mr. Haroun even continues to occupy his ministerial functions.

In the two other cases, we await the decision of the Court, which will make a fully independent ruling based on the merits of the indictments. As the Prosecutor has emphasized, no procedure has actually been begun within the Sudanese judicial system regarding the cases currently before the ICC.

France is dedicated to the authority of both the Security Council and the ICC, the judicial body authorized to punish the most serious crimes against international humanitarian law and human rights.

The responsibility for the present situation in Darfur falls neither on the Security Council, which has taken the measures it deems necessary for the

maintenance and restoration of peace, nor on the ICC and its various bodies, to which the Council entrusted a mission which it is exercising in full independence. The Sudanese authorities have the obligation to cooperate with the International Criminal Court with regard to the execution of the warrants issued for Mr. Haroun and Mr. Kushayb. They could, for example, themselves undertake to pursue the two accused under national jurisdiction in accordance with articles 17 to 19 of the Statute of Rome.

Furthermore, the Sudanese authorities bear a heavy portion of the responsibility for hindering international deployment and humanitarian activity in Darfur, for the cross-border activity of armed groups aimed at destabilizing the neighbouring country of Chad and for the absence to date of a potential political solution to the crisis.

Progress has recently been made in the deployment of the African Union-United Nations Hybrid Operation in Darfur, the renewal of moratoria on the restrictions on humanitarian operations and the resumption of diplomatic relations with Chad. However, that does not constitute a radical change in the policy of the Sudanese authorities in Darfur. Attacks continue despite the proclamation of a +- unilateral cessation of hostilities; the Janjaweed militia show no signs of concern; the humanitarian situation continues to deteriorate. For their part, the rebels must assume their full responsibility in seeking to reduce violence, to respect international law and to effect the active resumption of the political process.

As the Prosecutor has done in his report, I would like to recall the language of the presidential statement adopted by the Security Council, our Council, on 16 June:

> "The Security Council takes note of the efforts made by the Prosecutor of the International Criminal Court to bring to justice the perpetrators of war crimes and crimes against humanity in Darfur and ... the transmittal by the Registry of the International Criminal Court to the Government of the Sudan on 16 June 2007 of arrest warrants and the opening by the Prosecutor of other investigations on crimes committed by various parties in Darfur.
>
> "In this respect, the Council urges the Government of the Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court, consistent with resolution 1593 (2005), in order to put an end to impunity for the crimes committed in Darfur" (*S/PRST/2008/21*).

That presidential statement remains fully relevant. The Sudanese Government's dispute of both the authority of the Security Council and the jurisdiction of the Court is not admissible. We must remind the Sudan of its obligations to respect the Security Council's resolutions and to cooperate with the International Criminal Court in the implementation of resolution 1593 (2005). In 2005, the Security Council gave the Court the task of fighting impunity in Darfur in the interests of justice and peace. The Sudanese Government must cooperate with the Court to carry out this mission, as do all other parties to the conflict in Darfur and, more generally, all States and regional and international organizations concerned.

Mr. Zhang Yesui (China) (*spoke in Chinese*): At the outset, I would like to congratulate Croatia on its assumption of the presidency of the Security Council for this month. I believe that, under your guidance, the work of the Security Council will proceed very smoothly.

We appreciate the briefing to the Security Council by Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC) on the latest developments in dealing with impunity in Darfur. The question of the Sudan covers two issues: the North-South question and that of the Darfur region. The problem of Darfur involves the political process, peacekeeping deployment, economic development, humanitarian relief assistance and judicial justice. The situation is complex and very tough. Currently, the international community is focused on two major issues: first, whether the peaceful situation can be maintained in the Sudan; and secondly, whether the largest mission in the history of United Nations peacekeeping can be implemented smoothly and achieve its desired results.

At present, North-South relations in the Sudan, next year's presidential election and the political processes in Darfur are at very sensitive junctures. As the Sudan is the largest country in Africa in terms of geography, the question of whether peace can be maintained there is of great significance to the region and the African continent as a whole. It will take a great political wisdom to find a balanced and comprehensive way to achieve peace and justice.

Regional conflict usually leads to massive human rights violations and criminality. In recent years, in the context of the international community's cooperative efforts to address regional hotspots, answers have been proposed for addressing impunity and achieving international judicial fairness. However, the pursuit of international judicial justice should be carried out with the ultimate aim of putting an end to conflict and in the wider context of restoring peace.

We recall that, in recent years, international judicial action against impunity has been successful only in situations where conflict has ceased and peace has been consolidated. In such circumstances, judicial practices are less likely to experience interference from political factors and are thus more likely to achieve justice. The hasty launch of legal proceedings while conflict is ongoing will inevitably result in interference in the relevant political processes. In such circumstances, no good results will be obtained, even with the best intentions to pursue international justice.

The International Criminal Court embodies the expectations and aspirations of nations to pursue international justice. To that end, the Court needs the political trust and support of all nations. In July, the Prosecutor of the ICC announced the Court's charges against leaders of the Sudan, causing considerable worldwide repercussions. Many States are concerned that this move will have a negative impact on peace in the Sudan. The League of Arab States and the African Union have both expressed their serious concern.

The Government of the Sudan is working to end impunity in Darfur through national proceedings. Furthermore, the Government of the Sudan has also been making new efforts, including through active cooperation with the United Nations peacekeeping deployment. It has expressed its support for the Carter initiative and for the peaceful efforts of the Joint Chief Mediator to promote negotiations. It has also announced a ceasefire in Darfur. All these measures deserve to be acknowledged and welcomed.

The Chinese Government supports the international community's efforts to achieve peace and international justice in Darfur. We appeal to the International Criminal Court in the spirit of cooperation to create a situation in which its efforts, together with those of other parties of the international community, can interact positively to jointly promote the peace process in the Sudan.

Mr. Churkin (Russian Federation) (*spoke in Russian*): I wish at the outset to thank Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for the eighth report of the Prosecutor on steps being taken to investigate the situation in Darfur pursuant to Security Council resolution 1593 (2005), and for his briefing today. This contained both analytical and emotional elements, as well as political views that exceeded the boundaries of the competence of the Prosecutor of the International Criminal Court.

The Russian Federation views the report's information on the unceasing violence in Darfur with profound regret and concern. It is clear that this violence can reliably be stopped only through clear progress towards a political settlement in that region of the Sudan. In that regard, the Security Council bears a great responsibility with respect to ensuring the effectiveness of the African Union-United Nations Hybrid Operation in Darfur, carried out under a Council mandate.

We take note of the Prosecutor's aspiration to carry out his functions in an independent and unbiased manner. But there is also a need to balance the demands of personal responsibility and the interests of the peace process. Work in the legal sphere must proceed taking into account the joint efforts towards a settlement of the situation in Darfur and in the Sudan as a whole.

On numerous occasions in the past, the Russian Federation has noted the importance of an objective assessment of the actions of all parties to the conflict. We are satisfied by the fact that steps are being taken in the investigation to clarify the circumstances of the September 2007 attack on African Union peacekeepers at Haskanita. At the same time, however, in spite of the difficulties in this area of the investigation, it is important to step up work to gather information about the activities of rebel factions.

It is well known that the Prosecutor's decision to approach the judges of the ICC with a request for an arrest warrant against President Al-Bashir of the Sudan did not produce a unanimous reaction: it evoked diverse reactions in international circles. Specifically, authoritative regional organizations such as the African Union and the League of Arab States expressed their concern about an indictment's possible negative

consequences for the situation in the Sudan. We fully understand their position on this issue.

At the present politically sensitive stage, it might well make sense to focus efforts on measures designed to restore dialogue and trust among the parties to the conflict. In our view, steps taken by the Sudan side to create its own capacity to investigate crimes that fall within the jurisdiction of the ICC should be encouraged. In that regard we take note of the letter dated 17 November 2008 from the Permanent Representative of the Sudan addressed to the President of the Security Council (S/2008/714), containing information about Khartoum's latest initiatives in this area.

For its part, the Russian Federation will continue to do everything in its power to bring about peace in Darfur.

Mr. Terzi di Sant'Agata (Italy): I too would like, on behalf of my delegation and on my own account, to thank Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court, for his important briefing. I reiterate Italy's full support for the International Criminal Court (ICC) and for the work of the Prosecutor. Italy appreciates the difficult circumstances in which the Prosecutor is conducting this investigation and wishes to renew its strong confidence in him and in the Court. Italy believes that full support for him by the Security Council should emerge from today's debate.

More than three years have passed since the adoption of resolution 1593 (2005). On that occasion the Council decided to send a strong signal that peace and justice must be pursued hand in hand. Today we are being told once again that appalling crimes against civilians, including heinous violence against women, continue to be committed in Darfur in a climate of impunity. And we are being told that Sudanese institutions are still not cooperating with the International Criminal Court, while worrisome allegations are increasingly being made concerning the continuing involvement of the Sudanese Government in facilitating the activities of the Janjaweed militias. The need for a more effective approach to the conflict in Darfur, encompassing the humanitarian, security, political and rule-of-law dimensions, is today more urgent than ever in order to restore and maintain a lasting peace. There is no doubt that bringing to justice those responsible for serious and continued violations of international humanitarian law and human rights law cannot be avoided, in order to contribute to peace in Darfur and throughout the country.

Italy welcomes the action undertaken by the Prosecutor with regard to the attacks against the African Union peacekeeping mission at Haskanita in 2007. The Rome Statue is clear in qualifying that type of crime as a war crime. At the same time, we strongly condemn all attacks against the civilian population, non-governmental organizations and humanitarian organizations, as described in the Prosecutor's report.

Resolution 1593 (2005) must be fully implemented. I should like to recall that in its paragraph 2 it requires that

> "the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution".

We are concerned by the reports of continued lack of cooperation, to which I have referred, and by the fact that the two arrest warrants that have been issued have not yet been executed. The European Union has issued many clear statements calling on the Government of the Sudan to cooperate unconditionally with the ICC and to surrender the two individuals for whom it has issued arrest warrants. It may also be appropriate to recall that the Government of the Sudan and all other parties to the conflict in Darfur are under a specific obligation to comply with Security Council resolutions. In that regard, we believe that the Security Council should carefully and promptly consider the issue of the possible adoption of individual sanctions with respect to those against whom arrest warrants have been issued.

Italy encourages the ongoing dialogue and diplomatic efforts deployed to date by the ICC, the African Union and the League of Arab States, as cited in the report. Fighting impunity is an important priority for the international community, but that principle, which is at the core of the Rome Statute of the ICC, has yet to be translated into consistent practice. The Court is entitled to intervene only when national authorities are unwilling or unable to genuinely prosecute. All States are under the primary obligation to prevent or to punish offences committed in their territories.

It is still possible for the Government of the Sudan, in the context of Darfur, to prove that it can prosecute and punish those who have committed crimes, at all levels, in its national courts. Justice, however, can no longer be postponed.

Mr. Kafando (Burkina Faso) (*spoke in French*): I too would like to thank Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court, for his introduction of the eighth report on the activities of his Office with respect to the Darfur conflict. We take note of the report.

It is now a truism to say that the situation in the Sudan continues to be of great concern, given the very large number of victims both among civilians and among personnel of peacekeeping operations. We reaffirm that deliberate attacks against civilian populations and peacekeeping forces are unacceptable, irrespective of who carries them out. Faced with so complex and tragic conflict as that of Darfur, the international community must therefore demonstrate ingenuity and courage in order to bring about a comprehensive political solution as quickly as possible. We therefore welcome the numerous international initiatives of the United Nations, the African Union and several States, including Qatar, to help the people of the Sudan to survive their difficult ordeal. We thank in particular the joint United Nations-African Union Mediator for his ongoing efforts to that end. We also pay tribute to the women and men of the African Union-United Nations Hybrid Operation in Darfur (UNAMID), who work every day in particularly trying conditions at the side of the people of the Sudan. For their part, the Sudanese parties have also made major commitments to finding a solution to the conflict. However, their efforts remain clearly insufficient, and they must be urged to be bolder and more engaged.

Faithful to the principles of justice and the rule of law, Burkina Faso wishes to reaffirm, as the African Union has already done, its dedication to fighting impunity and to promoting equal justice for all in the Sudan, and in Darfur in particular, without which no political solution to the crisis can endure. That is the only way to ensure that justice is done on behalf of the thousands of victims of the war.

Burkina Faso believes that the search for a political solution and the administration of justice are not at all contradictory so long as the integrity of each process is fully maintained. That is why, as a State party to the Rome Statute, my country reaffirms yet again its full support for the activities of the International Criminal Court (ICC) and believes that those activities must be undertaken with the greatest possible caution and in the context of a purely judicial approach, with the sole objective of revealing the truth, prosecuting the guilty and protecting the interests of the victims in accordance with resolution 1593 (2005).

There is a particular need to avoid any action that could weaken the population's trust in the international community and thereby polarize the positions of parties, which could undermine all ongoing efforts and scuttle the political process, including the deployment of UNAMID, which we believe is not what the international community seeks to achieve. There is thus a need to assess opportunities in a dispassionate and objective manner and to take measures to ensure that equitable justice is served, while maintaining peace in Darfur, the Sudan and the region.

Follow-up and the success of the political process are to a great extent in the hands of the United Nations and the African Union, which, in support of that process, have decided together to deploy in Darfur the largest peacekeeping mission in history. We therefore invite the Sudanese Government to take all necessary steps to cooperate in the prosecution of persons recognized as being guilty of war crimes and crimes against humanity and, in general, to cooperate in combating impunity.

The Security Council, which has referred the case of Darfur to the ICC, must continue to closely follow developments in the prosecution and to pursue its consideration of the issue. It cannot reject any potential solution or spare any effort. It must be ready to listen to all, including the victims, the Court and, above all, its African Union partner. The African Union has always reaffirmed — in particular in its communiqué of 21 July — its conviction that "in order to achieve long-lasting peace and reconciliation in Darfur, it is imperative to ... bring to justice the perpetrators of gross human rights violations in that region" (*S/2008/481, annex, para. 10*). It is not advocating impunity in Darfur, but rather insisting on the need to preserve the integrity of all political and judicial processes and to ensure that the will for justice does not entail the taking of decisions that could jeopardize the political process.

Mr. Urbina (Costa Rica) (*spoke in Spanish*): Allow me to begin by congratulating you, Sir, on your assumption of the presidency of the Council for this month. I am convinced that your abilities and experience will ensure your successful leadership of our work.

I thank the Prosecutor of the International Criminal Court (ICC) for his introduction of his report to the Council today.

We often feel that the international community is not yet fully aware of the true significance of the creation and consolidation of the ICC. The Court undoubtedly represents a transcendent step in the process of strengthening international law. We have clearly stated on other occasions that, as a member of the Council, Costa Rica intends to the best of its abilities to represent the interests of the small States that make up more than half the membership of the Organization and whose independence, sovereignty and territorial integrity depend on awareness and the strict observance of international law.

It is precisely for that reason that my country welcomed the creation of the Court and works assiduously to consolidate it. An international order that is unable to deliver punishment for the most serious crimes against humanity is one that cannot offer guarantees or protection to the millions of human beings who are subject to barbarity. We must raise our voices on behalf of those innocent victims and work to strengthen international law.

Fortunately, acting under Chapter VII of the Charter, in 2005 the Council adopted resolution 1593 (2005), putting the capacities of the young ICC to the test. I am that sure that, in adopting that resolution, the Council was aware that it was not only testing the Court's capacities, but, more important, expressing its commitment to implementing the Court's decisions. In referring the case to the Court, we were not merely lending it our support, but also committing ourselves to implementing and cooperating in the implementation of its decisions.

If the judges of the Court accede to the new requests of the Prosecutor by issuing new arrest warrants, all of those responsible will have the opportunity to exercise their full legal rights under the Rome Statute. My delegation is concerned that such warrants will simply be added to the list of those that have yet to be implemented. In April 2007, the judges of the Court issued two arrest warrants against Ahmed Haroun and Ali Kushayb, but unfortunately those individuals remain free and continue to occupy important posts in the Government of the Sudan.

My Government regrets the pressure that has been applied on this Council to work for the suspension of the Court's decisions. We believe that the pressure should be applied on the Government of the Sudan so that they comply with the requirements of the Court, and not on this Council for it to suspend the Court's decisions.

Costa Rica agrees with and endorses the recommendations of Prosecutor Ocampo. This Council should begin to consider what should be our next steps to enforce the arrest warrants, to ensure that the Council's decisions in resolution 1593 (2005) are implemented.

We cannot today change the facilities provided by the Government of the Sudan for the deployment of UNAMID. They cannot be exchanged for more new crimes, for more impunity and for the deterioration of the humanitarian situation in the Sudan. Nor can we content ourselves with new calls for cooperation with the Court. We did that in presidential statement number 21 earlier this year, and cooperation with the Court continues to be zero. This afternoon the Council will hear Mr. Holmes, the Under-Secretary-General for Humanitarian Affairs, speak of the deterioration of the humanitarian situation in Darfur. We cannot be satisfied with the adjustments made for the deployment of UNAMID and say nothing about the deterioration of the humanitarian situation in the Sudan.

Costa Rica recalls once again that because of its very nature the Court is not equipped to arrest those persons. No court of justice in the world has that role. Costa Rica understands that execution of the arrest warrants is up to States and, ultimately, to the international community.

This is not the time to be content with meeting on a six-month schedule. To the contrary, this is the moment to increase the pressure to finally bring about the needed cooperation with the Court. This Council should not give in to the voices that insist that we are endangering the peace process in the Sudan. We already know, and we have been warned, that there may be reprisals. The situation could get even worse, but true peace will be closer to hand. We should know — as the poets of old have so often said — that

night is darkest just before dawn. The Council cannot hesitate to enforce the decisions of the Court and to hold perpetrators responsible for the consequences of their actions.

It is urgent that we begin a process that takes a serious look into the issue of complying with the mandates of the Court. We need to revise the broad range of instruments available to the international community to meet its objectives and to place some of them at the service of the Court's effectiveness, because the Court's future depends on that effectiveness.

We are in the presence of a State that does not want to — or is not able to — protect its population, who are the target of war crimes, crimes against humanity, genocide and ethnic cleansing. How much longer will the Council delay in examining whether we are seeing the first case of the responsibility to protect, as stipulated in the 2005 World Summit Outcome?

We are, of course, concerned about the statements of the Sudanese authorities with regard to the security of internationally protected staff and the humanitarian workers. We are concerned about the acts committed against them every day. We recall that international humanitarian law proscribes any attacks on internationally protected staff, particularly on those who are attempting to assist populations at risk, as in the case we are looking at. We absolutely reject, and would condemn, any reprisals against international civil servants and humanitarian staff, and we will work within this Council to determine who is responsible if that turns out to be necessary.

Mr. Kleib (Indonesia): Let me begin by joining previous speakers in welcoming the Prosecutor, Mr. Luis Moreno-Ocampo, to the Council and in thanking him for his briefing on the implementation of resolution 1593 (2005).

The security and humanitarian situation in Darfur remains worrying. The international community's efforts to help the Sudan to address the situation in Darfur are facing mounting challenges, and primary among them are the continued armed clashes.

Let me reiterate that Indonesia strongly condemns all gross violations of human rights and international humanitarian law. We condemn those who commit war crimes and crimes against humanity. Impunity must not be tolerated, and the perpetrators of those crimes must be brought to justice without delay. My delegation deeply regrets and is concerned by the information contained in the report on the ongoing crimes by all parties.

A great deal has been said today about problems in establishing cooperation between the International Criminal Court and the Government of the Sudan. My delegation regrets that no progress has been achieved in this matter. In addressing the matter of cooperation between the Court and the Sudan, my delegation reasserts the importance of viewing it from a broader perspective. It should be also approached in the context of a search for a comprehensive solution to the situation in Darfur, which is comprised of four dimensions: political, peacekeeping, humanitarian and legal dimensions. They are all mutually reinforcing and complementary to one another. Our efforts in all dimensions need mutual cooperation and reinforcement rather than division and isolation of certain dimensions. As the Prosecutor stated this morning in his briefing, none can succeed in isolation.

In this context, we agree on the importance of striking a balance and having synergy between the pursuit of justice and the maintenance of peace and security. In that regard we fully support the views of the African Union, the League of Arab States, the Organization of the Islamic Conference and the Non-Aligned Movement on the need to ensure that the ongoing peace process in Darfur is not jeopardized.

Indonesia reasserts that the implementation of resolution 1593 (2005) and actions of the Prosecutor shall neither nullify the principle of complementarity nor absolve Sudan's national court of its responsibilities, as stated in the presidential statement of 16 June 2008 (S/PRST/2008/21).

In line with the communiqué of the Peace and Security Council of the African Union of 22 September 2008 and the package solution offered by the Arab League, Indonesia urges the Government of the Sudan to urgently take concrete steps to bring to justice the perpetrators of gross violations of human rights in Darfur. The Government of the Sudan should also ensure that its national law does not exempt anyone from responsibility. It is also important that all the crimes covered in international humanitarian law will be covered by Sudanese law. Indonesia is confident that the Sudanese Government will take up those

responsibilities to meet the requirements of the principle of complementarity.

In the context of implementation of the principle of complementarity, my delegation shares the view on the importance of the contributions of the African Union, the Arab League and others to the promotion of an accountability mechanism in the Sudan.

We welcome the conclusion of the investigation with regard to crimes against peacekeepers and humanitarian personnel in Haskanita. The issuance of arrest warrants for war crimes in Haskanita is a significant step that requires further action by the Office of the Prosecutor of the International Criminal Court. In that regard, we wish to stress that ensuring the continued cooperation of all Darfur armed rebel movements is essential.

Finally, my delegation wishes to emphasize once again its appreciation of the Court's independence and of the Prosecutor's efforts to implement resolution 1593 (2005).

Ms. DiCarlo (United States of America): I would like to thank Prosecutor Moreno-Ocampo for his briefing and for keeping the Council informed of developments on the Sudan.

Today I would like to make four points.

First, the United States expresses its grave concerns over the situation in the Sudan, in particular in Darfur. The humanitarian situation remains dire, and attacks on civilians by both Government of the Sudan forces and rebel groups alike continue.

Secondly, we support the Darfur peace process efforts of the Joint African Union-United Nations Chief Mediator Bassolé. Our primary and immediate goal is to see measurable improvement of the situation on the ground for the people of Darfur, not mere declarations or promises.

Thirdly, we note with interest the announcement by the Government of the Sudan of a unilateral ceasefire in Darfur and its recognition that such a ceasefire should have a monitoring mechanism to enforce it. However, we are deeply disappointed by the continued violence in Darfur, including attacks by rebel movements and the Sudanese armed forces. A viable and lasting ceasefire is a vital step towards establishing peace in Darfur and in the region as a whole.

Fourthly, the United States remains steadfastly committed to promoting the rule of law and helping to bring violators of international humanitarian law to justice, and it will continue to take a leadership role in righting those wrongs. We applaud efforts to identify and bring to justice any persons perpetrating crimes against the people of the Sudan. Our previous actions with respect to the terrible crimes being committed in the Sudan should leave no doubt about the strength of our commitments. The international community has not ignored the atrocities and massive human suffering that has occurred during the ongoing conflict in Darfur, which the United States has declared to be a genocide.

The United States has domestically designated, and thus barred from the United States financial system, seven individuals and multiple entities for conduct or financing related to the conflict in Darfur. The United Nations Security Council sanctions committee is able to designate those who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities, violate the arms embargo or are responsible for offensive military overflights. The United States urges the sanctions committee to use responsibly the tools at its disposal in order to prevent further violence in Darfur. We encourage members of the sanctions committee to allow for meaningful follow-up to the recommendations of the Panel of Experts on the Sudan, and we urge the Council to request briefings from the Permanent Representatives of the Sudan and Chad.

Mr. Kumalo (South Africa): Let me begin by congratulating you, Mr. President, on your assumption of the Chair for the month of December and assuring you of my delegation's support. Allow me also to thank the Ambassador of Costa Rica for his sterling work in presiding over the Council during November. I also wish to express the appreciation of my delegation to the Prosecutor of the International Criminal Court (ICC) for his statement in this Chamber and in particular for his important work.

Since the Prosecutor's last report to this body, an event has taken place that has resulted in a closer look at the Rome Statute and specifically article 16 thereof. I am of course referring to the application by the Prosecutor to the Pre-Trial Chamber for the issuance of a warrant of arrest in respect of President Omer Al-Bashir of the Sudan, a matter which is still pending. This sensitive matter has, more than any other event

over the last six months, stimulated debate on the relationship between peace and justice. The debate has raised the challenge of finding a balance between ending impunity for international crimes through judicial accountability, on the one hand, and the realities of bringing an end to conflict through a sensitive peace processes, on the other.

The wise drafters of the Rome Statute were keenly aware of that sensitive balance between political and legal considerations during the drafting process, and that is what led to their recommendation that the Security Council be accorded the powers contained in article 16 — powers that allow the Council to strike a balance between the important principles of peace and justice, should the situation on the ground demand it.

We appreciate the fact that the Prosecutor's responsibility is to follow the evidence wherever it leads him and to implement the law without fear, favour or even political considerations, and we support his role in that respect. However, we also recognize a corollary responsibility of the Security Council, which is to consider political imperatives in situations with which it is seized that are before the Court and, if the Council finds it meritorious, to request the Court to defer prosecution in accordance with article 16 of the Rome Statute.

The African Union (AU) Peace and Security Council had considered it advisable that the Security Council consider making a request to the ICC to defer the potential case against President Al-Bashir. The decision of the African Union Peace and Security Council was brought to the attention of the Security Council on 31 July 2008. The AU Peace and Security Council

> "expresse[d] its conviction that, in view of the delicate nature of the processes underway in the Sudan, approval by the Pre-Trial Chamber of the application by the ICC Prosecutor could seriously undermine the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur and the promotion of long-lasting peace and reconciliation in the Sudan as a whole and, as a result, may lead to further suffering for the people of the Sudan and greater destabilization with far-reaching consequences for the country and the region" (*S/2008/481, annex, para. 9*).

It is also worth noting that the African Peace and Security Council is not advocating for impunity; on the contrary, in the same decision that I quoted, the Peace and Security Council also invited the AU Commission to set up

> "an Independent High-Level Panel made up of distinguished Africans of high integrity, to examine the situation in depth and submit recommendations to Council on how best the issue of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other, could be effectively and comprehensively addressed" (*ibid., para. 11 (ii)*).

The AU Peace and Security Council further "urge[d] the Government of the Sudan to take immediate and concrete steps to investigate human rights violations in Darfur and bring to justice their perpetrators" (*ibid., para. 11 (iv)*).

In the light of the steps being taken by the African Union and others to ensure that peace and justice are mutually reinforcing in Darfur rather than contradictory, we continue to hope that this Council will take the time necessary to have a discussion and decide on an article 16 deferment as it relates to the President of the Sudan.

South Africa is a member of the International Criminal Court and indeed, one of the founding members of that important Court, and we remain fully committed to supporting its work. It is precisely based on our support for the Court and the Statute establishing the Court that we advocate for the application of the Rome Statute in resolving any challenges that arise between peace and justice. Article 16 of the Rome Statute was contemplated for precisely the kind of situation we face with regard to the application by the Prosecutor for the indictment of President Al-Bashir. It is our contention that article 16 can best be applied prior to issuing a warrant of arrest, so as to avoid interference with the judicial process. Thus, the Council's consideration of the request by the AU Peace and Security Council becomes urgent.

As we have said before in this Chamber, we see the International Criminal Court as central in ending impunity for international crimes and in establishing conditions under which justice and the rule of law can be maintained. The Court, through its ability to deter the further commission of international crimes, serves

as an advocate of adherence to the rule of law, and thus we expect cooperation by States with its work.

We are acutely aware of the challenges facing the Prosecutor, which arise primarily from the fact that the International Criminal Court does not have its own police force, or even an army, to enforce its arrest warrants and therefore depends entirely on the cooperation of States. The Security Council has a responsibility to demand the cooperation of States, particularly in cases in which the Council has referred cases to the Court. It was for that reason that the Security Council issued presidential statement S/PRST/2008/21, urging the Government of the Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court. We therefore reaffirm that appeal by the Council and expect that the Government of the Sudan and all parties to the conflict in Darfur will cooperate fully with the International Criminal Court.

Finally, through you, Mr. President, I should like to pose a question to the Prosecutor. A couple of times, he warned the Council not to be induced into protecting President Al-Bashir and others who may be under investigation by the Court. The question that I would like to pose to the Prosecutor is: Does this mean that if the Security Council discusses article 16 of the Rome Statute as it applies to this case, we will be understood as either attempting to protect those people or having been induced in some way into covering up of what is happening in the Sudan? I think that that needs to be made very clear. Otherwise, should the Council get into a discussion of this, those on the outside might think that we have been trapped into some kind of cover-up or inducement.

Mr. Arias (Panama) (*spoke in Spanish*): Permit me at the outset to echo what the representative of Costa Rica said regarding the paramount importance of the establishment of the International Criminal Court. I should also like to thank Prosecutor Luis Moreno-Ocampo for the report that he has provided us on the progress made in the investigations being conducted in Darfur pursuant to resolution 1593 (2005).

Through resolution 1593 (2005), this Council took the historic decision to refer a specific case to the International Criminal Court for the first time. The Court and its officials have shouldered that responsibility with all the rigour required for such a lofty duty, as demonstrated by the progress made in the investigations into the situation in Darfur, as presented to us this morning. However, after the presentation of three cases to the Court's judges and the issuance of two arrest warrants against alleged perpetrators of crimes against humanity, those arrest warrants have yet to be carried out. Impunity cannot and must not be an option.

In resolution 1593 (2005), the Security Council stipulated that the Government of the Sudan was obliged to cooperate with the Court and with the Office of the Prosecutor. However, Panama is concerned at the lack of constructive responses to the two arrest warrants issued 20 months ago by the International Criminal Court against Ahmad Harun and Ali Kushayb for allegedly having participated in committing crimes against humanity. Panama, as a member of the Security Council and a State party to the Rome Statute, feels obligated to reiterate the appeal to the Government of the Sudan to meet its responsibilities towards the international community.

The International Criminal Court represents the will of 108 nations that have decided to exchange the arbitrariness of the past for a system of transnational justice that does not permit to go unpunished the most horrendous crimes of which humankind has proved capable. The same will for change is what motivated the Security Council to adopt resolution 1593 (2005). We are aware of the challenge that that entails. Therefore, both the Council and the United Nations membership must be prepared to take the measures required, even if that affects the highest authorities of a country.

We recognize that it is important that the Prosecutor has concluded the investigations related to the attack perpetrated on 29 September 2007 against a military base of the African Union Mission in the Sudan at Haskanita. We also appreciate the expressions of willingness to cooperate with the Court on the part of some rebel groups. The Security Council must continue to focus its efforts on ensuring that the 17,000 humanitarian workers providing aid to 2.7 million victims of the Darfur conflict can carry out their noble mission without putting their lives at risk. We cannot allow humanitarian personnel to continue to be subjected to such indiscriminate attacks.

If we are to resolve the difficult situation in Darfur and ultimately attain the objectives of resolution 1593 (2005), the Government of the Sudan

must fulfil its national and international obligations. The solidarity and continued cooperation of the entire membership of the Organization, in particular the Arab countries and the members of the African Union, are also essential. Panama views as positive the intention shown by the Government of the Sudan to raise the standards of its justice system to acceptable international levels. We also consider the mediation proposed by the State of Qatar as a way to create an atmosphere of peace and sustained justice. That initiative should have the Council's support.

Ms. Pierce (United Kingdom): I should like to join you, Mr. President, and others in welcoming the Prosecutor of the International Criminal Court (ICC) and in thanking him for his further briefing on his investigation into the very grave humanitarian situation in Darfur.

My Government continues to strongly support the independent judicial role of the ICC in Darfur. We also support the Prosecutor's efforts to combat impunity through the investigation of war crimes and crimes against humanity committed there. The perpetrators of those most serious crimes should be brought to justice. Justice for victims is an essential component of achieving peace in any part of the world, and that also means in Darfur. We reiterate our thanks to the Prosecutor and his staff for all their work to help achieve that. We also welcome the Prosecutor's engagement — as detailed in his report — with United Nations and regional bodies, notably the African Union and the League of Arab States. It is important that that dialogue continue.

My Government is deeply concerned by reports that crimes against humanity and war crimes are continuing in Darfur and that ongoing attacks against civilians include murder, systematic rape, the destruction of homes and villages and forced displacement. There are horrific reports of the rape of thousands of women and girls — some as young as five — by both rebels and Sudanese armed forces.

We commend the Prosecutor's ongoing efforts to monitor and investigate these crimes against the civilian population of Darfur, and we also condemn attacks on humanitarian workers and peacekeepers.

Once again, I would like to use the occasion of this debate in the Security Council Chamber to call upon all parties to the conflict to refrain from further acts of violence against civilians and protected persons and against humanitarian workers and peacekeepers.

It is also a matter of strong concern that there have been reports of comments from senior members of the Sudanese Government expressing doubts about the continued safety and security of United Nations personnel and peacekeepers, particularly linked to the Prosecutor's ongoing investigations. The Government of the Sudan should be in no doubt about its responsibilities to ensure the safety of United Nations and humanitarian personnel. These allegations and these reports do the Sudanese no credit. I hope that they will stop and, on the contrary, that there will be an affirmation from the Government of the Sudan that it will live up to its responsibilities in this respect.

Following the Prosecutor's last briefing in June, this Council adopted a statement calling on the Government of the Sudan and all other parties to the conflict to cooperate fully with the ICC, in accordance with their obligations under resolution 1593 (2005). That statement still stands, and we reiterate it today. We deeply recall that, more than 18 months since the issue of arrest warrants for Ahmed Haroun and Ali Kushayb, there has been no progress. We call upon the Government of Sudan immediately to execute these warrants.

I have listened carefully to the debate today and have noted that some Council members have suggested that the Security Council should act to defer the ICC's investigation. This is not my Government's view. We see no justification at present for the suspension of the ICC's work in Darfur, and my Government does not back any such plan. The onus is on the Government of the Sudan to take much more ambitious, bold and concrete action to cooperate with the ICC and to achieve peace in Darfur.

Mr. Hoang Chi Trung (Viet Nam): My delegation wishes to thank Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his briefing on the activities of the Court pursuant to resolution 1593 (2005). We take note of all the activities carried out by the Prosecutor and his Office, as reflected in his eighth report to the Council.

Viet Nam is deeply concerned about the continuing reports of serious violations of international humanitarian law and human rights law in Darfur. We condemn all attacks aimed at Darfurian civilians, humanitarian personnel and peacekeeping forces. We

support the efforts to fully investigate these crimes and bring the perpetrators to justice.

While stressing the need to implement resolution 1593 (2005) in its entirety, my delegation notes that the Government of the Sudan had committed to exercise its jurisdiction through the appointment of special prosecutors, the establishment of special criminal courts and the completion of criminal proceedings against seven cases in 2005. We trust the Government of the Sudan will sustain and step up such national judicial efforts to ensure justice for victims of gross human rights violations in Darfur. We believe that such an approach would enjoy the broad support of the international community, including the ICC.

Viet Nam continues to believe that combating impunity or violations of international humanitarian law and human rights law in Darfur is part of the comprehensive endeavour for peace and national reconciliation in the Sudan. We support the African Union approach, as stipulated in that organization's Peace and Security Council communiqué dated 21 July 2008, addressing the interlinked issues of combating impunity and promoting peace and reconciliation in a mutually reinforcing manner. We also share the view of the Arab countries, as reflected in the solution package agreed upon by the Arab League and the Government of the Sudan in July 2008.

In this respect, we welcome the recent decision of the Government of the Sudan to declare an immediate ceasefire in Darfur; this was a constructive endeavour to promote the peace process. We call on all other parties concerned to join in the ceasefire and participate with good will in the negotiations for a political solution to the Darfur conflict. The United Nations and the international community should intensify assistance to facilitate and consolidate these fragile developments. We would, therefore, caution against the imposition of unduly coercive measures which may further complicate the situation in Darfur.

By way of conclusion, we would like to call for further cooperation between the Government of the Sudan and other parties to the conflict in Darfur, including the ICC, regional organizations and States interested in the implementation of resolution 1593 (2005).

The President: I shall now make a statement in my capacity as the representative of Croatia.

I join others in thanking Mr. Moreno-Ocampo for his briefing and offer both him and the International Criminal Court (ICC) Croatia's full support.

This morning we heard yet another very disturbing report which not only conveys a lack of substantive progress in bringing to justice those responsible for atrocities in Darfur but also the threat of ongoing violence. Shocking and abhorrent crimes continue to be committed against innocent civilians, mostly women and children. Equally deplorable is a string of attacks against peacekeepers and humanitarian workers. We take note of the latest application presented by the Prosecutor against three rebel commanders in connection with the Haskanita attack and the application against Omar Al-Bashir.

It is regrettable that the Government of the Sudan continues to refuse to cooperate with the Court despite its prosecutions, many of which engage the Government in the judicial process. The principle of complementarity is the cornerstone of the ICC. It is disappointing to note that, despite its rhetoric, the Government of the Sudan has not made any genuine effort to comply with the complementarity test and allow the Court to examine the admissibility of the applications.

While we appreciate the ongoing efforts aimed at securing a peaceful solution to the conflict in Darfur, and the sensitivities of that process, Croatia believes that it would be tragic if this should lead to accommodating permanent impunity by interfering with the ongoing independent judicial activities.

As regards the lack of cooperation of the Government of Sudan with the International Criminal Court, this, in our view, represents the Sudan's disregard of its international obligations as specified in Security Council resolution 1593 (2005). As such, it also represents the disregard of the Security Council itself. The constant defiance of the Sudan towards the Court shows contempt for the multitude of victims in Darfur, as well as for international order and the United Nations Charter. The crimes committed in Darfur, and the impunity associated with these acts, as demonstrated by the Government of the Sudan, is intolerable and must be brought to an end.

We reiterate the clear message that this Council reaffirmed in its presidential statement last June (S/PRST/2008/21) and call upon the Government of the Sudan, all parties to the conflict in Darfur, as well

as United Nations Member States, to extend their full cooperation to the Court.

Croatia takes seriously and supports the Prosecutor's recommendations on bilateral and multilateral actions that need to be taken in order to ensure enforcement of the Court's decisions in the future, in the hope that these can be endorsed by all members of the international community.

I now resume my functions as President of the Council.

I shall now give the floor to Mr. Moreno-Ocampo to respond to comments and questions raised.

Mr. Moreno-Ocampo: First, I would like to respond to the question posed by the representative of South Africa. For the purpose of clarification, may I begin by saying that I truly appreciate the question, in particular because South Africa stands as an example to the world on how to conduct a transition. As the Permanent Representative of South Africa said, South Africa, as a founding member of the International Criminal Court (ICC), was leading the Rome discussions, and throughout my five-year tenure, South Africa has been leading and supporting international justice. That is why I really appreciate his question and his frankness.

Let me be totally clear. As he said, I am a prosecutor; I have to respect the law. I have to follow the evidence without fear, favour or political consideration. That is what I am doing. He has his responsibility, and I will not infringe on his responsibility. But part of my responsibility is to investigate crimes, and what I see in the crimes committed in Darfur is that the crimes have the particularity that they are committed by the members of the Government, using the Government apparatus. That is the particularity of this case, because President Al-Bashir is the President of the country and the commander-in-chief of the army. But how can we ensure that the Sudanese Armed Forces will not follow illegal orders? That is the particularity. He gave the orders to commit the crimes. He ensured — and this is the evidence, I am following the evidence now — he ensured the implementation of his orders, and let me review how.

First, he replaced those officers and governors who refused to follow his instructions. He replaced a governor in Darfur because he advised him not to use the militia/Janjaweed. He recruited the militia/Janjaweed and incorporated them as reserve forces to replace those members in Darfur who were members of the army and refused to attack Darfur.

Interestingly, Mr. Al-Bashir adjusted the plans for the extermination of the groups according to the facts. After 2004, there was increasing pressure from the international community, and most of the villages that the Fur, Zaghawa and Masalit were inhabiting were emptied. Then he adjusted, to attack them in the camps.

The most clear example is how he then appointed Ahmed Haroun, who was the Minister of State for the Interior, coordinating the attacks in the villages. In September 2005, when most of the Fur, Zaghawa and Masalit areas were clean, he appointed the same person to be Minister of Humanitarian Affairs. It is a false name, and that members must know. Of course, it is a secret service operation; it is an operation to keep controlling and attacking these people. But of course, they cannot directly attack people in the camps, because there would be an international clamour. That is why they used different strategies. Fear, rape and hunger are the strategies. That is why people there, aid workers and African Union-United Nations Hybrid Operation in Darfur (UNAMID) peacekeepers, are under tremendous pressure.

He gave the orders, he adjusted the orders and he implemented the orders, but then the other aspect that I was trying to brief the Council on — and I appreciate the question because it allows me to provide the answer — is the covering up of the crimes. A person cannot openly use a State to commit crimes. That is why they cover up the crimes. They cover up the crimes with different strategies, using the Janjaweed militias, playing with the ambiguity of the Janjaweed militias and denying the commission of crimes. As members know, they have denied the crimes and denied the numbers many times. Today I quoted them as now denying the rapes, saying that the women who are raped are relatives of the rebels. They deny the value of the evidence. They say I have no evidence. They are trying to attack all of my witnesses, all over the world. They are attacking the evidence and they are also protecting individuals sought by the Court. That is why they have not handed over Haroun, because for President Al-Bashir, it is a really important point not to hand over Haroun and to keep people following his illegal instructions.

One important point I was trying to relate to the Council is that they always promise national proceedings and they never deliver national proceedings. How can you investigate nationally if you

are attacking those who are speaking out about the crimes?

Finally, part of his cover-up is diplomatic work to the Council, the African Union, the Arab League and the United Nations, promoting and proposing ceasefires that he never complies with, promising justice that he never delivers and promising to disarm Janjaweed militias — and the next day saying, well, not the reserve forces — and, finally, threatening retaliation. Using proxy force is the last strategy he uses to keep his plan working. So I am just talking about how the crimes are committed, and I have to alert the Council. This is what I saw according to my evidence. This is my responsibility.

The President: I thank Mr. Moreno-Ocampo for the clarifications he has provided. The representative of South Africa has asked for the floor to make a further statement, and I call on him.

Mr. Kumalo (South Africa): Thank you, Mr. President, for being generous enough to give me the floor. I just wanted to make a clarification. I thank the Prosecutor, Mr. Moreno-Ocampo, very much for his clarification.

The only issue I wanted to make clear is that we are the Security Council. We are not lawyers. We are not prosecutors. We sit here, having to make decisions, and we look at the entire Rome Statute. The Rome Statute makes a provision for this article to be used, and the Security Council will, at the time when it takes this issue up, balance the two things: the maintenance of international peace and security, and the fight against impunity. The Security Council must be for fighting impunity, but there is also the other side to it.

My question was intended to make it clear that people who are not in the Council should not see us debating this issue and then interpret it as if we are condoning all these horrible things that we have spoken of. We in no way condone them, and we regret that they take place, but we also have the responsibility to look at the entire matter.

Now, whether the Security Council eventually agrees with that or not, that is precisely what makes it fun, because all 15 of us will have to decide if we agree or not. I was just concerned that when we ask these tough questions about how to balance all these awful things we are hearing about and the maintenance of peace in Sudan, those who are sitting here watching this must not get the impression that, just because we are asking the question, we therefore have taken one side or the other. We have not, and we are delighted that we have the Court, which can go in and search for all this information.

I hope Mr. Moreno-Ocampo never gives up in his work and that he continues as his mandate allows him to. But we also have the other mandate here, and at some point we will have to look at and balance the two. I think some of my colleagues pointed out that, at some point, we need to step back and not wear prosecutor's caps, saying that we want to jail so-and-so. But rather but we need to look back at all the evidence and say: how do we then carry out our mandate? I think Mr. Moreno-Ocampo's clarification has really helped.

The President: I call on Mr. Moreno-Ocampo.

Mr. Moreno-Ocampo: I thank Ambassador Kumalo for his support.

The President: I call on the representative of Costa Rica to make a further statement.

Mr. Urbina (Costa Rica): As Ambassador Kumalo said, not everyone here is a lawyer. But I am a lawyer.

(*spoke in Spanish*)

All I wanted to add is that the Prosecutor has done his work by presenting his findings to the judges of the Court, and what we are talking about now is not the fulfilment of the wishes or the opinions of the Prosecutor, but the decision of the judges of the Court. It is important to differentiate, for the role of the Prosecutor is often confused with that of the Court.

The Council referred the situation in the Sudan to the Court for investigation. It was investigated by the Prosecutor, who then requested the issuance of arrest warrants. The judges then concluded that there was sufficient evidence to issue those warrants, which they did. I think that it is now up to the Council to assume responsibility for the consequences of having referred the situation in Darfur to the Prosecutor's Office and the Court.

The President: There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 12.30 p.m.